IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. [redacted] 14

R. J. THOMAS, *Appellant*,

vs.

H. W. COLLINS, *Sheriff of Travis County, Texas*

Appeal From the Supreme Court of the State of Texas

BRIEF FOR THE APPELLANT

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OPINION BELOW

The opinion of the Supreme Court of Texas in this case is reported in 174 S W (2d) 958, and is also found in the Record at pages 318-326. No written opinion was issued by the State District Court.

JURISDICTION

This case is brought here by appeal in accordance with the provisions of Section 861(a) of Title 28 of the United States Code. This Court's jurisdiction arises under the provisions of Section 237(a) of the Judicial Code (28 U.S.C. Section 344 (a)). In the present case the validity of a statute of the State of Texas has been drawn in ques-

tion on the ground of its being repugnant to the Constitution and laws of the United States, and a decision in favor of the validity of the statute has been rendered by the Supreme Court of the State of Texas.

Statement as to jurisdiction has been separately filed in accordance with Rule 12, Section 1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Constitutional Provisions

Amendment I of the federal Constitution, which provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV, Section 1 of the federal Constitution, which provides:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VI of the federal Constitution, which provides:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

State Statutory Provisions

House Bill 100, Acts of the 48th Legislature, 1943, of the State of Texas (Chapter 104, Vernon's Annotated Texas Statutes, Article 5154-A):

"*Section 5. Organizers.* All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliation, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation 'labor organizer'; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership."

Section 2(c) defines the term "labor organizer" as follows: "Labor organizer shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union";

"Section 4(a). It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored."

"Section 12. Enforcement by Civil Procedure. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application

of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunction, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts."

STATEMENT OF THE CASE

Appellant, R. J. Thomas, is president of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO, a voluntary unincorporated labor association, hereinafter referred to as the UAW. Petitioner is also one of the vice presidents of the Congress of Industrial Organizations, an unincorporated association composed of a number of nation-wide labor organizations, hereinafter referred to as the CIO.. Appellant is a resident of the City of Detroit, State of Michigan. (R.22-23)

Appellant is paid a salary for his work as president of the UAW, and serves as vice president of the CIO without salary. (R. 30, 32, Defendant's Exh. 6 and 7, R. 102, 197-200)

Appellant had been invited by the Oil Workers International Union, an affiliate of the CIO, to address a meeting on the evening of September 23, 1943, at the city of Pelley, Texas. The meeting was called under the auspices of the Oil Workers International Union incident to its campaign to organize the employes of the Humble Oil Company, whose plant is located in the adjoining community of Baytown. A petition for an election had been filed by the Oil Workers International Union with the National Labor Relations Board; a hearing had been had before a Trial Examiner and the Union was awaiting the Board's decision for direction of an election. (R. 33)

On September 22nd, shortly after the Appellant had arrived at Houston, newspaper accounts were published to the effect that Appellant intended to solicit workers to join the Union at the meeting on September 23rd without first obtaining a license as required by the Statute. (R. 34-35) Thereupon, on the same day, a complaint was filed in the 53rd District Court in Austin, Travis County, a distance of 167 miles from Houston, by the State of Texas through its Attorney General, seeking a temporary restraining order and temporary and permanent injunction to restrain Appellant from soliciting members in any labor union affiliated with the CIO without first obtaining the license required by the Statute. (R. 291-294) The District Judge at 4 p. m. on September 22, 1943, issued an order to show cause returnable before him on September 25, 1943, and an *ex parte* temporary restraining order enjoining Appellant as follows (R. 294-295, 315-317):

> "IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the OWIU and members for Local Union 1002 of the OWIU and from soliciting memberships in any other labor union affiliated with the CIO and members of any other labor union affiliated with the CIO while said defendant is in Texas, without first obtaining an organizer's card as required by law."

The order to show cause and temporary restraining order were served on Appellant at Houston on September 23, 1943, at 2:22 o'clock p. m., approximately 5 hours prior to the scheduled meeting. (R. 35)

In reliance upon his constitutional rights, Appellant decided to deliver his speech as planned and to solicit members at the meeting without first obtaining a license.

The meeting was held on the evening of September 23rd on the grounds next to the Pelley City Hall. Among the

speakers were the Mayor of Pelley, the assistant National Director of the Oil Workers Organizing Campaign, the representative of the United Steelworkers of America, the sub-regional director of the Congress of Industrial Organizations, and the Appellant, R. J. Thomas. The audience consisted mainly of workers of the Humble Oil Company. (R. 37-39)

Appellant's speech is a part of the record in this case. (Defendant's Exh. 10, R. 41, 279-290.) He related to the audience the advantages of joining a union, the important role played by unions in the war effort and the meaning of the war to workers; he urged all the oil workers in the audience, and one worker by name, to join the Oil Workers International Union. The meeting was peaceful. (R. 10.) Appellant did not "sign up" any workers as members of the Union.

At the close of the meeting, Appellant as well as two other speakers were arrested for soliciting members to join the Oil Workers International Union without first obtaining a license as required by the Statute. After warrants had been issued and pleas of not guilty entered, they were released on bail pending trial.

The following morning a motion for contempt for violating the temporary restraining order was filed in the District Court for Travis County and an order for attachment was issued for the arrest of Appellant. At the hearing on the contempt motion on September 25, Appellant pleaded not guilty to the charge of contempt, and challenged by written pleading and orally the constitutionality of the temporary restraining order and of the Statute, insofar as they prevented him from soliciting workers to join a union without first obtaining a license. (R. 1, 45, 299-302.)

After hearing the testimony and overruling Appellant's motion to dismiss and quash, the District Judge found Appellant guilty of contempt of court for "violation of the

law and of the order of this court" and sentenced him to "imprisonment for a period of three days and a fine of One Hundred ($100.00) Dollars." (R. 309.)

Thereupon Appellant was remanded to the custody of the Sheriff of Travis County, Texas, but was released within a few hours upon filing a bond set by the Chief Justice of the Supreme Court of the State of Texas upon a petition for writ of habeas corpus filed in that court.

In his petition for writ of habeas corpus and in the brief filed and arguments made in his behalf before the Supreme Court of the State of Texas, Appellant claimed that said Statute, insofar as it prevented Appellant from soliciting members into a union without first obtaining a license, and the temporary restraining order issued thereunder, were unconstitutional on the grounds that they deprived Appellant of his right of free speech, that said Statute constituted class legislation and that it was discriminatory and deprived Appellant of the equal protection of the laws as guaranteed by the 14th Amendment to the federal Constitution. (R. 312-314.)

On October 27, 1943, the Supreme Court of the State of Texas rendered its opinion and judgment sustaining the constitutionality of the Statute and the temporary restraining order, denying Appellant's petition for writ of habeas corpus and remanding Appellant to the custody of the Sheriff of Travis County. (R. 318-326.) On November 24, 1943, the Court denied Appellant's motion for rehearing. (R. 327-336.)

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of the State of Texas erred:

(1) In holding and deciding that the Statute and temporary restraining order, as applied to Appellant, are not in conflict with, and a violation of the provisions of the

14th Amendment to the federal Constitution in that said Statute and temporary restraining order assume and seek:

(a) to deprive Appellant and certain other citizens of the United States and of the State of Texas, of rights, privileges and immunities secured to citizens of the United States and of said State;

(b) to deprive Appellant and other citizens and persons resident in the United States and in the State of Texas of liberty and property without due process of law;

(c) to deprive and to deny to Appellant and certain citizens and persons within the jurisdiction of the State of Texas, the equal protection of the law.

(2) In failing to hold that said Statute constitutes class legislation by its arbitrary and unreasonable discrimination against labor unions and their members and by its denial to Appellant of the equal protection of the law, and is therefore invalid and unconstitutional under the provisions of the 14th amendment to the federal Constitution.

(3) In failing to hold that said Statute, by prohibiting aliens from asking a person to join a union, constitutes an abridgement of the right of free speech and a denial of the equal protection of the law as guaranteed by the 14th Amendment to the federal Constitution.

SUMMARY OF ARGUMENT

I.

The Statute and the Temporary Restraining Order on Which the Contempt Judgment Is Based, Are Unconstitutional in Requiring Appellant to Obtain a License Before Soliciting Workers to Join a Union, Thereby Depriving Appellant of His Civil Rights as Guaranteed by the Fourteenth Amendment to the Federal Constitution.

A. The Requirement of a License as a Prerequisite to Appellant's Right to Make His Speech in the Pres-

ent Case Cannot Be Supported by Any Analogy to the Licensing of Business and Commercial Activities.

1. This Court has made a sharp distinction between the exercise of civil rights and the right to engage in business or commercial activity, and has declared that the Constitution affords a far higher degree of protection against interference with civil rights.

2. Discussion of labor problems and solicitation of membership in labor organizations constitutes an exercise of civil rights. This Court has expressly so declared in decisions protecting the employe's right of free speech and in decisions protecting the employer's right of free speech.

3. Labor organizations, fundamentally, are formed and operate as the only effective medium whereby an individual employes may exercise the civil rights guaranteed to them by the Constitution. An interference with their right to solicit membership in their organizations constitutes an interference with the only means that they have to exercise the civil rights which this Court has declared to be theirs.

4. The fact that the Texas statute affects only "paid" organizers does not diminish its impact on civil rights.

B. The Texas Statute Imposes an Unconstitutional Previous General Restraint Upon the Right of Employes and Their Spokesmen to Solicit Members for Their Organization.

1. Previous general restraints of the character imposed by the Texas statute on the exercise of civil rights are invalid.

2. The Texas statute cannot be supported by the doctrines of the cases which have upheld the power of a State or municipality to require mere routine and reasonable identification or registration of individuals for protection of the public in the use of the public streets and highways or in the public solicitation and collection of funds.

   (a) This statute does not involve a mere registration or identification requirement but in practical effect severely limits and to some extent precludes the effective exercise of constitutionally protected civil rights of Texas workers. In actual operation the statute puts the applicant to substantial and unreasonable burden and delay. In the light of the realities and necessities of labor organization the statute imposes unreasonable and serious burdens which are real limitations on the right of free speech both by exposing employes to employer pressures and by delaying the exercise of the right of free speech under circumstances in which time is of the essence if the right is to have any meaning.

   (b) Separate and apart from the prohibitive effects of the Texas statute on the exercise of civil rights, it cannot be supported because on the other side of the balance there is not merely no "clear and present danger" to

any interest which the State might legitimately seek to protect, but there is literally no reasonable relationship between this statute and any conceivable evil which the State of Texas might seek to eliminate.

II.

The Statute Constitutes Class Legislation, Is Discriminatory and Deprives Appellant of the Equal Protection of the Laws as Guaranteed by the 14th Amendment of the Federal Constitution.

A. The Statute Makes an Arbitrary and Unreasonable Discrimination Against Labor Organizations.

B. The Statute Makes an Arbitrary and Unreasonable Discrimination Against Non-Citizens.

ARGUMENT

I.

The Statute and the Temporary Restraining Order on Which the Contempt Judgment Is Based, Are Unconstitutional in Requiring Appellant to Obtain a License Before Soliciting Workers to Join a Union, Thereby Depriving Appellant of His Civil Rights as Guaranteed by the Fourteenth Amendment to the Federal Constitution.

In analyzing the exact nature of the issues before this Court it is important to consider precisely what the Appellant was engaged in doing and precisely what the restraining order issued under the Texas statute purported to forbid his doing.

There is no issue but that the full and complete extent of the forbidden activities of the Appellant was the making of a speech. There is no issue as to the fact that the making of this speech was the only act in which Appellant engaged and for which it is the State's contention that he was required to have a license.

Appellant did not parade on the public streets.

Appellant did not engage in any activity which involved actual or even possible noise or disturbance to the public.

Appellant did not seek or secure the use of any public facilities.

Appellant came into the State of Texas for the sole purpose of addressing a group of workers and urging on them the desirability of membership in unions generally and in the Oil Workers' Union in particular.

Appellant's sole activity in the State of Texas was to make an address from the same platform as did the Mayor of the City and representatives of other unions. Appellant's sole activity in the making of this address was to describe the meaning of the war to the workers whom he was addressing, the role played by unions in the war effort and the values of union membership. Having described the significance of the war to American workers and the reasons for the activities of the union in support of the war and the desirability of membership in the unions as a means of aiding in the prosecution of the war, Appellant concluded with a plea to workers in his audience to join the union in its activities and with a plea to one named worker in the audience to join the union.

Appellant did not solicit or receive any funds or dues.

Appellant did not "sign up" any workers into any union.

The licensing requirement of the statute did not apply to the collection of funds or the actual signing up of members. Presumably under the statute Appellant could have engaged in either or both of these activities without a license and with full legality so long as he did not "solicit." Appellant's "crime" consisted of "solicitation" without a license.

The activity for which Appellant was required to have a license and which, in the absence of a license was rendered criminal by a State statute, was simply and solely the act of addressing the workers on the achievements of unions, the benefits of unionism, and concluding the address with a plea to the audience generally and to a named worker in the audience to join a union. It is the State's contention that in order to be permitted to make such an address and such a plea, Appellant could constitutionally be required to travel several hundred miles to and from the State capital at Austin in order to present his credentials, prove his qualifications, and receive authorization from the State, or to engage in correspondence with the Secretary of State at the capital at Austin for some time prior to the actual conduct of the meeting in order to accomplish the same result.

On the face of these circumstances there would seem to be little room for doubt that what is involved here was an attempted exercise of the right of free speech and assembly by the Appellant and an unwarranted interference with that right by the State of Texas. The State, however, has denied that this case involves an exercise of free speech. The State goes on to assert that even if free speech is involved, the State statute does not impose an unconstitutional infringement on the right.

On the first score the State seeks to justify its action by analogy to licensing regulations imposed upon various types of business and commercial enterprises. On this basis the State in effect contends that what is regulated here is not an exercise of civil rights but a business or commercial enterprise entitled to no greater constitutional protection than are business and commercial enterprises generally.

On the second score the State apparently contends further that even in the realm of the exercise of civil liberties the infringement involved in the present case is valid under the principles of those cases which have upheld State action in the interest of peace and order on the public streets.

These two contentions pose the basic issues in this case. We shall address ourselves to each of them in turn.

A. *The Requirement of a License as a Prerequisite to Appellant's Right to Make His Speech in the Present Case Cannot Be Supported by Any Analogy to the Licensing of Business and Commercial Activities.*

1. *This Court Has Made a Sharp Distinction Between the Exercise of Civil Rights and the Right to Engage in Business or Commercial Activity, and Has Declared That the Constitution Affords a Far Higher Degree of Protection Against Interference With Civil Rights.*

There can be no question as to the significance and importance of the distinction between the State's power to regulate and even prohibit under certain circumstances the conduct of certain types of business and commercial enterprises and on the other hand the State's power where an exercise of civil rights falling within the province of the First Amendment is involved. As this Court said in *Murdock v. Pennsylvania*, 319 U. S. 105, 111:

> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

See also *West Virginia v. Barnette*, 319 U. S. 624.

That the line may not always be capable of easy delineation does not of course negate the basic distinction. In *Valentine v. Chrestensen*, 316 U. S. 52, this Court had before it an attempt to shield blatantly commercial advertising material behind a collateral injection of comment on the conduct of public officials. The Court was called upon to make and did make a determination as to whether the situation involved, in the words of the distinction stated in the quotation from the *Murdock* case, *supra*, the "right to use the press for expressing one's views" or merely the issuance of "commercial handbills."

For guidance in deciding in the present case whether Appellant's activities fall within the realm of expression of views or in the realm of "commercial handbills," we find readily available indicia in numerous decisions of this and other courts.

On the general principle this court said in *Thornhill* v. *Alabama*, 310 U. S. 88, 101:

> "The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. The Continental Congress in its letter sent to the Inhabi-

tants of Quebec (October 26, 1774) referred to the 'five great rights' and said: 'The last right we shall mention, regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated, into more honorable and just modes of conducting affairs.' Journal of the Continental Congress, 1904 Ed., vol. I, pp. 104, 108. Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

Identical in spirit is the declaration of the highest court of the State of New Jersey in *State v. Butterworth*, 104 N. J. L. 549, 142 Atl. 57:

> "The right of the people to meet in public places to discuss in open and public manner all questions affecting their substantial welfare, and to vent their grievances, to protest against oppression, economic or otherwise, and to petition for the amelioration of their condition, and to discuss the ways and means of attaining that end, were rights confirmed and guaranteed them by the Magna Charta, Petition of Rights, and the Bill of Rights, the mainstay of the British Constitution, and the bases of both our Federal and State Constitutions."

2. *Discussion of Labor Problems and Solicitation of Membership in Labor Organizations Constitutes an Exercise of Civil Rights.*

In connection with the formation and functioning of labor unions, however, it is not even necessary to debate the applicability of these general definitions of the scope of operation of the guarantees of free speech, press and assembly. There might perhaps have been doubt in years gone by. But with the acceptance of labor organizations

as a vital force in our society and with the growing significance of problems affecting employer-employe relations, working conditions, and employe welfare, this Court has answered the question and has consistently ruled discussions of matters in these realms to constitute a part of that area of human activity so basic to the democratic process, the exercise of the civil rights assured by the First Amendment.

a) Cases protecting the employee's right of free speech

In *Thornhill v. Alabama*, 310 U. S. 88, 102–103, this Court said:

> "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague v. CIO*, 307 U. S. 496; *Schneider v. State*, 308 U. S. 147, 155, 162, 163. See *Senn v. Tile Layers Union*, 301 U. S. 468, 478. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employes effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in Senn's case (301 U. S.

> at page 478, 57 S. Ct. at page 862, 81 L. Ed. 1229): 'Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'"

Employes through their labor organizations endeavor to carry on the "free discussion concerning the conditions in industry and the causes of labor disputes" by many means. These means may include the carrying of signs in the activity usually designated as picketing. The means may include the distribution of leaflets and the holding of meetings. The discussions thus carried to the public and to fellow employes may include discussion of specific disputes with specific employers or of general conditions in industry and the role of labor unions. In each form which this free discussion among employes may take it has received the specific assurance by this Court of constitutional protection under the guarantee of freedom of speech, press and assembly.

In the *Thornhill* case the exercise of these rights through the medium of picketing was upheld. See also *AFL v. Swing*, 312 U. S. 321; *Wohl v. Bakery and Pastry Drivers*, 315 U. S. 769.

In *Schneider v. New Jersey*, 308 U. S. 146, it was the right of free comment and discussion through the distribution of handbills on matters involving labor relations that was recognized as a matter of public interest and significance and within the realm of protected civil rights. That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes has been specifically declared by this Court once more in *Martin v. City of Struthers*, 319 U. S. 141, 145-6:

> " 'Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people.' *Schneider v. State, supra*, 308 U. S. 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members. . . . Door to door distribution of circulars is essential to the poorly financed causes of little people."

In *Hague v. CIO*, 307 U. S. 496, the problem involved the exercise of these same rights not merely by picketing and handbills but further by the holding of meetings and the general dissemination of information. Even more significantly, the *Hague* case did not involve merely an individual labor dispute but the more general right to hold meetings and disseminate information on labor organizations, their functions and values. The opinion of Mr. Justice, now Chief Justice, Stone, for example, stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.)

Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

Thus, insofar as the area of operation of a labor organization is concerned—the area of employer-employe relationships, employe welfare, labor rights, social legisla-

tion—this Court has made perfectly clear that discussion in these realms constitutes discussion of matters of public, economic and social importance within the proper protection of constitutional guarantees of free speech. This Court in its decisions has removed any foundation for attempted analogies between licensing regulations imposing prerequisites to such discussion and licensing regulations attached to the sale of stock or the sale of insurance or the operation of a real estate brokerage.

b) Cases protecting the employer's free speech

Indeed, it should be recognized that under the doctrines thus far enunciated by the Courts, it is not only the employe's or the union's presentation of argument and discussion on these problems which is assured constitutional protection. A recent group of Federal court decisions, all of which have been denied review by this Court, have evolved the doctrine that employers when they speak on matters of unionization of their employes are using speech, insofar as it is disassociated from any coercion, in a realm which falls within constitutional protection. *NLRB v. American Tube Bending Co.*, 134 F. (2nd) 993 (C.C.A. 2nd) *cert.* denied, 64 S. Ct. 84; *NLRB v. William Davies Co.*, 135 F. (2nd) 179 (C.C.A. 7th) *cert.* denied, 64 S. Ct. 82; *NLRB v. Trojan Powder Co.*, 135 F. (2nd) 337 (C.C.A. 3rd) *cert.* denied, 64 S. Ct. 76; *NLRB v. Jacksonville Paper Co.*, 137 F. (2nd) 148 (C.C.A. 5th) *cert.* denied, 64 S. Ct. 84; Cf. *NLRB v. Virginia Electric & Power Co.*, 314 U. S. 469.

Under the language of these decisions an employer may apparently solicit his employes to refrain from joining a union and his speech is within the constitutional protection of free speech. In the absence of threats, coercion or intimidation he may apparently carry on his solicitation in writing, by word of mouth, by calling his employes into

meetings, or by distributing literature among them, and he is afforded constitutional protection against statutory interference.

In these cases, therefore, as in the *Thornhill, Hague* and *Schneider* cases, *supra*, this Court has declared matters affecting labor relations, labor organization, membership in labor unions, to fall within the realm of protected constitutional liberties. To uphold the contention of the State of Texas in the present instance that the activities of the Appellant may be analogized to the type of business and commercial activity which does not involve protected civil liberties would be to accord to the employer a greater area of protected civil rights than to the employe and the employes' organization.

3. *The Fundamental Nature of Labor Organizations as the Only Effective Medium for the Exercise of Employes' Civil Rights.*

The foregoing considerations are sufficient to dispose of the State's position on this aspect of the civil rights issue. In a broader consideration, however, the enactment of the challenged statute and the position taken by the State pose a more fundamental issue of public importance. It is an issue on which this Court has ruled, both implicitly and explicitly. It is an unfortunate fact that the State of Texas as well as several other States which have taken similar action in the past year have chosen to fly in the face of the principles enunciated by this Court.

In this broader aspect the problem before this Court is the extent to which the State is to be permitted to go in rendering ineffective the rights declared and guaranteed to American working men and women by the *Hague, Thornhill* and *Schneider* cases, by limiting or destroying the ability of employes to exercise those rights in the only manner

in which, in the main, those rights can be made realistically effective, namely, through mutual and concerted action on the part of employes.

The *Thornhill* case, for example, guaranteed to employes constitutional protection of their right to publicize the facts concerning a labor dispute, the facts concerning employer-employe relationships and the working conditions in industry. This of course is a right assured to each of the individual employes. It is equally clear, however, that it is a right which has meaning only to the extent that an individual employe is free to call upon fellow employes to join him in the exercise of the right. A single employe is free to engage in the exercise of free speech through picketing only to the extent that he is at at same time free to call upon his fellow employes to join him in the picketing within the limitations of order and lawful regulation. Similarly an employe cannot be said to be free to disseminate his views through leaflets if he is not protected in his right to call upon his fellow employes to join him in the distribution of the leaflets.

An attempt to distinguish between the right to think and speak and the right to call upon others to join in organization for the spreading of thoughts and ideas is, insofar as the individual working man is concerned, on a par with an attempt to limit civil rights to liberty of publication while denying liberty of circulation. The attempt to make such a distinction is not new to this Court. The same suggestion was made in the case of *Lovell* v. *Griffin*, 303 U. S. 444. This Court answered (at 452):

> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean v. American Press Company*, *supra*,

was held invalid because of its direct tendency to restrict circulation."

What has been lacking in the position of the State and in the decision of the court below in this matter has been an appreciation of the basic nature of organizations of employes. The concept of employe organization arises from the recognition of the impotence of the individual employe faced with the single corporate organization which constitutes his employer. The thousands of employes of single employers or groups of employers have recognized their common problems and the necessity for assembling into organizations for the purposes of mutual discussion and the planning of mutual action. It is this process of organization and assembly and discussion and pooling of resources which makes possible the printing and distribution of leaflets, newspapers, pamphlets. It is this process of mutual assembly and consultation and discussion which makes possible the presentation of views and contentions to the employer and to the public.

This Court has long given realistic recognition to these basic facts concerning the nature of labor organization. Only recently, reiterating conclusions long accepted, the Court said (*NLRB v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33):

> "Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council*, 257

U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A.L.R. 360."

Labor organizations exist and act, and the organization for which Appellant spoke in the present case exists and acts, solely for the purpose of exercising and effectuating the rights assured in the *Thornhill, Hague* and *Schneider* cases.

To exercise their constitutional rights, to make it possible to reach their fellow workers and the public through leaflets, newspapers, meetings and similar media, workers have formed their organizations. To exercise their rights of free speech they have designated by democratic processes from among their own ranks spokesmen—spokesmen to speak on their behalf to their employers, spokesmen to speak on their behalf to other employes, and to urge the other employes to join in the common organization.

In their common assembly they have recognized the interrelationship of employes not merely in a single plant but throughout industries and throughout the nation. It is physically and economically impossible for an individual worker to exercise to its fullest extent his personal right of free speech, to reach his fellow employes throughout the country except by the formation of organizations of employes which enable the workers to designate individuals to act for them to reach other employes in all parts of the country, and to spread the views and aims and objectives for which all are joined in their mutual organization.

Is it possible then for the State of Texas to recognize the rights declared in the *Thornhill, Hague* and *Schneider* cases while at the same time contending that the realm of protected free speech does not include the act of soliciting and persuading and inducing employes to join in the common organization which exists as the sole means of effectuating the rights declared in those cases? We submit that

the State of Texas acts in violation of the principles of the *Thornhill, Hague* and *Schneider* cases when it acts on the assumption that a plea to employes to join in common organization for the better effectuation of civil rights is to be treated in the same category as an attempt to sell stock or insurance or any other commercial business activity.

Solicitation for membership and participation in labor organization is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Section 9. Thus the freedom of the individual worker to speak effectively through his organization in collective bargaining is, in a very practical and direct way, dependent upon his freedom to solicit his fellow workers to join with him. Indeed, the solicitation in which the present Appellant was engaged sought support for the union in a collective bargaining election to be conducted by the National Labor Relations Board.

The concept advanced by the State of Texas in this consideration is exactly on a par with a contention that the right to freedom of religion involves solely the right to pray in the privacy of one's home but does not include the right to organize a church, to distribute religious tracts, and otherwise to engage in the organized practice of religion where individuals' religious dictates so require.

As applied to the practice of freedom of religion this concept has been rejected by this Court in a series of cases which have made recent history. (Cf. *Murdock v. Pennsylvania, supra; Jamison v. Texas*, 318 U. S. 413; *Jones v. Opelika*, 319 U. S. 103.)

As applied to labor organizations the invalidity of this

concept is implicit in the doctrines of the *Thornhill* and *Schneider* cases. It is express in the decision in the *Hague* case which involved very directly, as we have indicated earlier, the right to hold meetings for the purpose of organizing workers into labor organizations, for the purpose of soliciting membership in these workers' organizations.

It is this broader consideration of the very nature of a labor organization which even separate and apart from the precise circumstances of the present case—the precise address delivered by this Appellant—indicates the invalidity of the Texas statute. In the present instance the application of the statute dictated a requirement of a license as a prerequisite for the simple act of delivering an address to a group of workers. That kind of a requirement in and of itself indicated a clear infringement of a perfectly obvious and simple aspect of the exercise of a civil right. But in its broader implications, the statute must also fall on the even more fundamental basis of its attempt to negate the civil right of workers to seek to solicit participation in their cause, to seek to solicit adherence to an organization which constitutes their only effective medium of expression of views in accordance with their constitutionally guaranteed civil rights.

4. *The Fact That the Texas Statute Affects Only "Paid" Organizers Does Not Diminish Its Impact on Civil Rights.*

In either the broader aspect of the case related to the basic nature of labor organizations or the narrower aspect of the case related to the specific action for which this Appellant was condemned, there is certainly no significance in the element which has repeatedly been expressed by the State, and on which the court below laid considerable emphasis, that the statute applies only to those who solicit membership in the union "for a pecuniary or financial consideration."

It may be noted in passing that the "pecuniary or financial consideration" of the Appellant in soliciting members for the Oil Workers International Union, the act for which he was found guilty of contempt, was certainly remote. He received no fee or salary from the Oil Workers International Union. The Oil Workers International Union is in turn affiliated with a national federation known as the CIO and of which Appellant is a vice president. Appellant, however, received no fee or salary or other "pecuniary or financial consideration" even from the CIO. His sole source of income comes from his position as president of another union affiliated with the CIO, namely, the United Automobile Workers of America. His solicitation of membership for the Oil Workers Union was an act of fraternal assistance rendered in the interests of trade unionism generally.

This fact, however, is not by any means the significant determinant of the relevance of the entire factor of pecuniary consideration. The receipt of a pecuniary consideration no more operates to deprive Appellant of constitutional civil rights than does the payment of income to a minister deprive the minister of religious rights nor the payment of a salary to a newspaper editor deprive the editor of the right of free press. The existence of civil rights does not depend upon whether those rights are exercised with or without compensation.

As we have indicated earlier, individual workers tied by economic necessity to their own jobs in their own plants are economically and physically limited in their ability to exercise their rights of free speech. It is one of the objects of their organization to pool their resources so that they may designate from among their ranks by democratic methods persons to act as spokesmen. That they free these spokesmen for more effective operation by drawing upon their common funds to support their spokesmen obviously cannot and does not result in a termination of the right

of free speech that is involved. It is on this same basis that the members of a congregation or church organization pool their resources for the support of a person to lead them in prayer.

The suggestion that the protection of the Constitution ends at the point where compensation begins is particularly ironic in the context of labor relations. The very purpose of using union-compensated persons as workers' spokesmen is to assure real freedom of expression and collective activity by insulating workers from employer reprisal. To deny protection because there is such compensation is to withdraw the Constitutional protection precisely at the point where it can become meaningful and effective.

The record in this case indicates that in the United Automobile Workers, the organization of which Appellant is president, as well as in all other CIO unions, solicitation of members is necessarily carried on not by any select group but by all members and officers and representatives of the organization (R. 30-32). Because the efficacy of the organization as a medium for the expression of the views of the workers who compose it is dependent upon the extent to which those workers are successful in inducing others to join with them, virtually all members are almost constantly engaged in attempts to induce their fellow employes to join in their organization. In the democratic operation of these labor unions a very large proportion of the membership are members of one or another of the various local committees, members of the plant bargaining committees, or serve as shop stewards. In the normal operation of the organization time lost from their regular jobs by members who thus perform functions on behalf of their fellow workers through the organization is compensated by payments out of the common fund. To the extent that these workers thus receive compensation for time spent on behalf of their employe organization, they are very frequently receiving com-

pensation for services which include the continued solicitation of fellow employes at their own plant or at other plants to join their organization.

Thus, as the record reveals (R. 30-32), solicitation of membership, attempts to persuade employes to join the organization may be carried on by unpaid volunteers or by persons who are in the main unpaid volunteers but receive occasional compensation for time lost from their regular jobs, by persons who are paid with relative regularity but on a part-time basis, as well as by persons who are relieved in full from their regular employment and compensated in full out of the common funds. It is the gravamen of the position of the State of Texas as upheld by the court below that activity which is a constitutional right of the volunteers loses its constitutional protection insofar as the paid personnel is concerned. It would be the logical implication of this same position that the volunteers lose their constitutional protection for the identical activity on those days of the week or in those hours of the day when they commence receiving compensation from their organization for time which they are forced to take off from their regular employment. We submit that it is perfectly clear that constitutional liberties do not thus vary with the time of the day or the day of the week or the source of compensation.

It is absurd to contend that this factor of compensation places the activities of the employes' spokesman or the minister on the one hand in the same category as the activities of a stockbroker or an insurance salesman on the other. The only similarity indicated by the fact of compensation is that both the insurance salesman and the minister have in common the characteristic that each must have sustenance and clothing and shelter in order to live. The fact of compensation does not make the activities comparable. The minister is provided with the necessary sustenance, clothing and shelter by the income afforded to

him by his congregation. The fact that his congregation affords him that income does not deprive his activity of its religious character.

This Court had precisely this issue before it in the *Murdock* case, *supra*. The contention was made in support of the constitutionality of the city ordinance requiring a license for the sale of literature that the Jehovah Witnesses sold their literature through full or part-time workers rather than through volunteers. This Court said (319 U. S. at 111):

> "But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project.
>
> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books.
>
> * * *
>
> "Freedom of speech, freedom of the press, freedom of religion, are available to all, not merely to those who can pay their own way."

Even more pointedly, in the case of *Follett v. Town of McCormick*, 64 S. Ct. 717, decided on March 27, 1944, this Court said (at 719):

> "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living. Whether needy or affluent, they avail themselves of the constitutional privilege of a 'free exercise' of their religion when they enter the pulpit to proclaim their faith."

The State of Texas can derive no constitutional support for its statute by characterizing Appellant and other labor

spokesmen as "labor organizers" and thereby seeking t place them under regulation as though their activities co stituted business or commercial transactions. As this Cou said in *Near v. Minnesota*, 283 U. S. 697:

> "Characterizing the publication as a business and th business as a nuisance does not permit an invasion of th constitutional immunity against restraint."

This, unfortunately, is precisely what the Texas Su preme Court attempted to do. The Court was content t declare:

> "It [the statute] affects only the right of one to engag in the business as a paid organizer, and not the mere rig of an individual to express his views on the merits of th union." (R. 322.)

In this and other portions of its opinion, the State Su preme Court apparently concluded that if the statute ha applied to persons who solicited members without pay would not have passed the test of constitutionality. W submit that under the decisions of this Court there is constitutional basis for distinction between the civil righ of those who receive pay and those who do not. The fu answer to the view of the Texas Supreme Court is be stated in the words quoted from the *Murdock* case, *supra*

> "Freedom of speech, freedom of the press, freedom religion are available to all, not merely to those who ca pay their own way."

B. The Texas Statute Imposes an Unconstitution Previous General Restraint Upon the Right Employes and Their Spokesmen to Solicit Men bers for Their Organization.

The foregoing pages have been devoted to a demonstr tion that the activity regulated in this case is an exerci

of free speech and not merely a commercial enterprise. We turn now to an application of the standards which this Court has laid down for evaluation of the validity or invalidity of a restriction or regulation of activity which constitutes an exercise of the right to speak and disseminate views.

Clearly the standard is not, as the State has contended, the standard applied to State regulation of commercial, profit-making enterprises. Basic to this consideration is the doctrine most clearly enunciated in *West Virginia* v. *Barnette*, 319 U. S. 624, 639:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

1. *The Invalidity of Previous General Restraints on Civil Rights.*

That a licensing prerequisite imposed upon the right to speak must be evaluated on the basis of the special standards of protection accorded to the exercise of free speech is equally clear. In *Lovell* v. *City of Griffin*, 303 U. S. 444, this Court had before it a city ordinance which prohibited

distribution of leaflets and other literature unless the distributors secured the written permission of the city authorities. This Court there concluded (at 451):

> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing.' And the liberty of the press became initially a right to publish 'without a license what formerly could be published only with one.' While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See Patterson v. Colorado, 205 U. S. 454, 462, 27 S. Ct. 556, 51 L. Ed. 879, 10 Ann. Cas. 689; Near v. Minnesota, 283 U. S. 697, 713-716, 51 S. Ct. 625, 630, 75 L. Ed. 1357; Grosjean v. American Press Company, 297 U. S. 233, 245, 246, 56 S. Ct. 444, 447, 80 L. Ed. 660."

In these cases the question is not whether the license required by the State would or would not have been granted to the individual restrained. It is not a defense for the State to assert that the license may be acquired for the asking. This Court said in the *Thornhill* case, *supra* (310 U. S. at 97):

> "The cases when interpreted in the light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of par-

ticular comments on matters of public concern. It is not the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Near* v. *Minnesota*, 283 U. S. 697, 713. One who might have had a license merely for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. *Lovell* v. *Griffin*, 303 U. S. 444; *Hague* v. *CIO*, 307 U. S. 496."

The *Murdock* case, too, involved a variant of the pattern of governmental attempt to impose a precondition upon the exercise of a constitutional liberty. Speaking of a license requirement which involved the payment of a license fee as a prerequisite to the exercise of the right of the Appellants in that case to distribute their religious literature, the Court said:

> "A state may not impose a charge for the enjoyment of a right granted by the federal constitution."
>
> * * *
>
> "It is one thing to impose a tax on the income of property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering his sermon. The tax imposed by the city of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment."

2. *The Texas Statute Is Not Comparable to One Involving Mere Identification or Registration for Public Protection.*

The State of Texas has sought support for the statute in the present case in the contention that the restriction imposed under the statute is nothing more than a "registration" requirement of a type which has been upheld by the courts. In this contention the State relies upon the decision of this Court in *Cox* v. *New Hampshire*, 312 U. S. 569, certain *dicta* of this Court in the case of *Cantwell* v. *Connecti-*

cut, 310 U. S. 296, and a decision of the Circuit Court of Appeals for the First Circuit in the case of *City of Manchester* v. *Leiby*, 117 F. (2nd) 661, *cert.* denied 313 U. S. 562. An examination of the significant aspects of these decisions reveals a complete absence of support for the State's position in the present case.

Of these cases the *Cox* case is the most significant. It is the only one which involves a direct holding by this Court sustaining the validity of an ordinance establishing a precondition for the engaging in the activity claimed to be a constitutional right. The statute of the State of New Hampshire in that case required a license for parades and processions on public streets. This Court carefully noted the limitations placed by the Supreme Court of the State in its construction of the intent and import of the statute. This Court noted that the New Hampshire Supreme Court had declared that the regulation

> "* * * was applicable only 'to organized formations of persons using the highways'; and that 'the defendants separately or collectively in groups not constituting a parade or procession' were 'under no contemplation of the act.'" (312 U. S. at 575.)

This Court went on to note with respect to the nature of the New Hampshire statute:

> "It was with this view of the limited objective of the statute that the State court considered and defined the duty of the licensing authority and the rights of the Appellants to a license for their parade, with regard only to considerations of time, place and manner so as to conserve the public convenience." (312 U. S. at 575.)

This Court also noted that (312 U. S. at 574, 575):

> "The authority of a municipality to impose regulations in order to assure the *safety and convenience of the people in the use of the public highways* has never been re-

garded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend. The *control of travel on the streets of cities* is the most familiar illustration of this recognition of social need. * * * As *regulation of the use of the streets for parades and processions* is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places. Lovell v. Griffin, 303 U. S. 444, 451, 58 S. Ct. 666, 668, 82 L. Ed. 949; Hague v. Committee for Industrial Organization, 307 U. S. 496, 515, 516, 59 S. Ct. 954, 963, 964, 83 L. Ed. 1423; Schneider v. State of New Jersey, 308 U. S. 147, 160, 60 S. Ct. 146, 150, 84 L. Ed. 155; Cantwell v. Connecticut, 310 U. S. 296, 306, 307, 60 S. Ct. 900, 904, 84 L. Ed. 1213." (Emphasis supplied.)

It was on the basis of these considerations that this Court concluded (312 U. S. at 576):

> "If a municipality has authority to control the *use of its public streets for parades or processions*, as it undoubtedly has, it cannot be denied authority to give consideration, without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right." (Emphasis supplied.)

In the one case in which it has thus upheld a licensing requirement, this Court was careful to restrict its determination to a consideration of the authority of the municipality to regulate the use of the public highways in the interests of the safety of the people. And it should be noted that even within that area of traditional and necessary exercise of public authority, this Court limited the proper action of the State to control exercised in a manner

> "so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places." (312 U. S. at 574.)

That even the power over the public streets is substantially limited to the making of reasonable regulations for the control of traffic and the maintenance of order is further demonstrated by the decision of this Court in *Jamison* v. *Texas*, 318 U. S. 413, 415-16.

In almost identical manner and language these are also the limitations of the *Cantwell* dictum of this Court and the *Leiby* Circuit Court decision. In the *Cantwell* case the Connecticut statute involved was found unconstitutional. It was a statute which required prior approval of the Secretary of the Public Welfare Council for the solicitation of funds for a religious, charitable or philanthropic cause. The Appellant in the case had been going from door to door and on the public streets making his solicitation for funds. The dictum upon which substantial reliance has been placed by the State of Texas and by the Supreme Court of Texas in support of the Texas statute in the present case declares:

> "The general regulation in the public interest of solicitation which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds is not open to any constitutional objection even though the collection be for a religious purpose." (310 U. S. at 305.)

This Court was thus discussing the regulation of the solicitation of funds. It was discussing the solicitation of funds from the public. Indeed, the Court specifically went on to explain that:

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for

> any purpose, to establish his identity and his authority to act for the cause which he purports to represent." (310 U. S. at 306.)

By the same token, the ordinance involved in the *Leiby* case attached the identification requirement solely to the sale of literature on "streets or other public places." The Circuit Court in defining the scope of the ordinance before it very carefully delineated its limitations. The court said:

> "The challenged ordinance is modest in scope. It puts no restriction upon the giving away of books, papers, magazines, etc., at any time and at any place. Persons desiring to 'sell or expose for sale' such literature on the streets or other public places are required to identify themselves. * * *" (117 F (2d) at 664.)

The Texas statute in the present case is not related to the use of the public streets.

Appellant in the present case was not engaged in the use of the public streets for the purpose of his address.

The statute in its licensing requirements does not purport to have any relationship to the solicitation of funds, whether publicly or privately.

Appellant in the present case did not engage in any solicitation of funds. Indeed, under the Texas statute Appellant needed no license to engage in the solicitation of funds.

He could have asked for funds without securing a license. He was forbidden to ask workers to join a union unless he secured a license.

The statute in the present case prohibited Appellant from making his speech without a license at any time or under any circumstances.

The statute in the present case prohibited Appellant, unless he secured a license, from making his speech seeking membership for the Oil Workers International Union, in any place in the State of Texas whether on the streets or in private homes or in social gatherings or in union meetings. The crime is committed if without a license a worker is asked to join a union in conversation or by speech or by written medium, whether in a private home, in a shop or factory, in an automobile or bus while going to work, in the union hall, or in any other place where workers live, play or work.

It should thus be noted first, in a consideration of the cases upon which the State of Texas relies, that these relate to nominal restrictions necessary for the maintenance of order on the public streets. The significance of this factor, obvious from the quotations cited above from this Court's decision in *Cox* v. *New Hampshire, supra,* is reinforced by the opinion of the Court in the recent case of *Prince* v. *Commonwealth*, 64 S. Ct. 438, decided December 14, 1943. In upholding the power of the State to prohibit the sale of literature by children "in any street or public place," this Court declared (64 S. Ct. at 444):

> "Our ruling does not extend beyond the facts the case presents. We neither lay the foundation 'for any [that is, every] state intervention in the indoctrination and participation of children in religion' which may be done 'in the name of their health and welfare' nor give warrant for 'every limitation on their religious training and activities.' The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others except the public proclaiming of religion *on the streets*, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision." (Emphasis supplied.)

Even more basically, however, it should be recognized that these cases represent an application of a general underlying principle running through this Court's decisions in the realm of civil liberties. The regulation of the public streets is a well-recognized area of necessary State action in the interests of physical safety and order. Even the protection of that well-recognized and well-accepted interest of the State is limited when civil rights are involved to the extent that, as this Court stated in the *Cox* case, the control must not be exerted so as to "deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places." (312 U. S. at 574.) The more general rule of evaluation has been set forth by this Court in the case of *Schneider* v. *New Jersey, supra*:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government of free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.
>
> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." (308 U. S. at 161.)

And in the making of this evaluation, in determining the effect of the challenged legislation as against the interest of the State to be protected, we have in mind once more

the basic standard enunciated in *West Virginia* v. *Barnette, supra,* which indicates that mere "rational basis" for State action while perhaps sufficient for regulation of a public utility, is not sufficient for restriction of free speech, for

> "freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (319 U. S. at 639.)

In applying these standards to the present case it is appropriate to evaluate realistically first, the impact of the regulation on the exercise of the rights which the State seeks to regulate and, secondly, the weight of any legitimate public interest which could conceivably be served by the regulation. The first evaluation clearly reveals that in practical effect the restrictions imposed by this statute, far from constituting a mere registration or identification procedure, impose a very real interference and limitation upon the effective exercise of the civil rights of Appellant and of employes generally in the State of Texas. On the second evaluation, not only does the record fail to reveal any "clear and present danger" to interests which the State may legitimately seek to conserve, but in fact there is no conceivable public interest to which the regulation could even purportedly be addressed. We should like to direct the Court's attention briefly to the factors relating to each of these inquiries.

(a) ***This statute does not involve a mere registration or identification requirement but in practical effect severely limits and to some extent precludes the effective exercise of constitutionally protected civil rights of Texas workers.***

The suggestion that the statute involves nothing more than a nominal registration or identification provision overlooks at least two important lines of consideration,

namely, (1) the actual procedure required as a prerequisite to the securing of a license entitling one to request workers to join unions, and (2) the realities of union organization and operation and the circumstances under which, for the effective exercise of their civil rights, workers must engage in their efforts to secure additional members for their organizations.

(1) *The factual operation of the licensing requirement*

Under the terms of Section 5, before an individual affected by the statute, such as the Appellant in the present case, is permitted to address a fellow worker or a worker in a plant and request that he join a union it is necessary:

(i) To secure from the union credentials.

(ii) Prepare a written request stating his own name in full and his labor union affiliation.

(iii) Attach a copy of his credentials to his application.

(iv) Sign the application.

(v) Proceed personally to the City of Austin, which is the capital of the State, in order to file his application, or send it by mail.

(vi) If he has sent it by mail await receipt from the Secretary of State of the organizer's card which must bear notations as to his name, union affiliation, and which must carry his own signature and the signature of the Secretary of State dated and attested by his seal of office.

The foregoing, moreover, are only the steps specifically spelled out in the statute. The State of Texas has urged the departmental rulings of the Secretary of State as important in considering the requirements of the law (R. 11). As the record reveals, the Secretary of State in administration and application of the law has required that the signature on the request for the card be acknowledged by a notary public. (Plaintiff's Exhibit 7, R. 12, 46-47.) The

Secretary of State further requires that the request bear the sworn statement of the applicant that he is a citizen of the United States. If there should be any question therefore as to his citizenship, he would have to obtain the necessary proofs so as to avoid the criminal penalties involved in the making of an untrue sworn statement.

Nor does this describe fully the hurdles which must be cleared to assure the right to ask a worker to join a union. The record in this proceeding contains the "Policies of State Department" setting forth the official procedure for administration of the statute. (Defendant's Exhibit 1, R. 13, 72-74) This document declares:

> "12. In the absence of mistake, fraud or misrepresentation with respect to securing same, it is considered that the Secretary of State has no discretion in the granting of an 'organizer's card,' and that the applicant will be entitled to same upon compliance with the Act. It will be required, however, that the applicant show a bona fide affiliation with an existing labor union."

The Secretary of State testified in the present proceeding that as of the time of his testimony he had already rejected 40 or 50 applications "where they failed to give all the information or failed to sign the application or failed to attach the credentials or some other such defect as that." (R. 14)

Not only must the Secretary of State determine whether an application has been properly filled out on its face, but he must also decide, and if any doubt is raised, investigate in order to determine, whether (1) "the credentials" adequately establish that the applicant has "authority to act as organizer for the labor union with which I am connected," and (2) whether the applicant is in fact a citizen of the United States, and (3) whether the applicant has been convicted of a felony and, if so, whether he has had his rights of citizenship restored "by proper authority."

On these two points it should be recalled that the total result is not merely, for example, that an alien may not solicit members for a union. If that were the provision a person certain of his own citizenship would be free to engage in the solicitation and would be subjected only to the threat of criminal prosecution if in fact he were incorrect in his assumption as to his own citizenship. The Secretary of State, however, requires that before engaging in the activity, even the citizen must satisfy the Secretary of State as to his citizenship and until he receives from the Secretary of State a signed document attesting to the Secretary of State's satisfaction on this point, even the citizen is forbidden to request a worker to join a union. (Plaintiff's Exh. 7, R. 12, 46-47, 14)

Can it with any reasonable foundation be said that all of this constitutes "merely" a nominal registration and identification system? We shall discuss in the following pages some of the realities of employe organization which render this kind of system as applied to labor organizations virtually a prohibition of solicitation in many instances. We submit at this point, however, that even on the face of the regulations, on the face of the statute and the stated policies of the Texas Department of State, the State of Texas has undertaken to impose an arbitrary series of serious restrictions on an exercise of free speech. A shop steward or local union committeeman operating as a representative of his fellow employes in the mill or plant in which he is employed and therefore compensated on a part-time or lost-time basis is forbidden to ask a worker or group of workers to join his union. He is forbidden to do so unless and until he has travelled or written to the Secretary of State at Austin and complied with all of the formalities imposed by the statute and the Secretary of State. He is forbidden to do this unless and until he has received from the Secretary of State a signed document attesting to his

right to ask his fellow workers to join his union. Du all this time and until all of these prerequisites have complied with he is silenced by the threat of jail an junction from uttering the forbidden words: "Will you my union?" We respectfully submit that for such res tions the State of Texas can find little support in c which authorize a requirement of registration of name address with a nearby city clerk in order to use the pu streets for a parade.

(2) *The restrictions imposed by this statute in the l of the realities of labor organization constitute un sonable and serious limitations on free speech.*

In the foregoing pages we have pointed out the br scope of the statute and the delays involved in attemp to comply with it. Those considerations demonstrate the conditions established by the statute as prerequisit the exercise of the right of speech in and of thems constitute such serious interference as to operate as vir prohibitions on the right of free speech.

This conclusion, however, is even more sharply tru the specific circumstances which surround the operatio labor organizations, which it will be recalled are the organizations upon which these limitations are impose

In earlier pages of this brief we have described to the damental concept of labor organizations and of the pro of securing adherents. The process necessarily starts an a group of workers in a plant who are as yet not mem of the organization. It is a process which histo rically met with the opposition of employers. The employe course has on his side the unique power inherent in his trol over the worker's job.

In these early and struggling stages of organization plant the solicitation of membership is carried on

worker to worker, in lunch time discussions and in social gatherings.

The few workers who at the start have joined in the movement arrange their organizational relationships and plans at small gatherings in each other's homes or elsewhere. They may designate some from among their meager ranks with specific tasks of leading in the discussions and in the movement to bring others into their ranks. At this level in their organizational activities they may commence their joint contributions and pooling of some of their funds to compensate those assigned specific tasks in the spreading of their views.

(i) The Texas Statute Destroys Organizational Rights by Exposure of Leaders.

In all of these early stages and particularly in the face of employer hostility, the possibility of having the value of union organization considered by the employes on its merits and in free discussion is dependent in large measure on the degree to which the discussion can be carried on without the knowledge of the employer and without fear of possible employer retaliation. Exposure of the names of the leading figures and indeed exposure even of the fact that union organization is being carried on or that a struggling organization exists among the workers is in many instances equivalent to a denial of the right to secure a free discussion and unhampered consideration of the merits of the issues.

One of the most familiar forms of interference with self-organization is the requirement that an employe disclose his affiliation with and activities in a labor organization. *Heinz* v. *NLRB*, 311 U. S. 514, 518; *NLRB* v. *Cities Service*, 129 F. (2d) 933, 934 (C. C. A. 2); *NLRB* v. *Botany*

Worsted Mills, 106 F. (2d) 263, 267-268 (C. C. A. 3); *NLRB* v. *Clarksburg Publishing Co.*, 120 F. (2d) 976, 979 (C. C. A. 4); *NLRB* v. *Alco Feed Mills*, 133 F. (2d) 419, 421 (C. C. A. 5); *NLRB* v. *W. A. Jones Foundry & Machine Co.*, 123 F. (2d) 552, 554 (C. C. A. 7); *NLRB* v. *Locomotive Finished Material Co.*, 133 F. (2d) 233, 234 (C. C. A. 8). Disclosure not only exposes the organizer to employer reprisal where the organizer is employed in a plant but identifies his associates as union adherents and subjects them to the fear of anti-union discrimination. Moreover, when the organizer is not employed in the plant, the requirement that he expose his identity leaves him a prey to beatings and bloodshed. *Matter of Goodyear Tire & Rubber Co.*, 21 NLRB 306, enforced in part in 129 F. (2d) 661 (C. C. A. 5); *Matter of Ford Motors* (Dallas), 26 NLRB 322, enforced in this respect in 119 F. (2d) 326 (C. C. A. 5); *NLRB* v. *Elkland Leather Co.*, 114 F. (2d) 221, 223 (C. C. A. 3), cert. den. 311 U. S. 705; *NLRB* v. *Newberry Lumber & Chemical Co.*, 123 F. (2d) 831, 835 (C. C. A. 6); *NLRB* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9) cert. den. 312 U. S. 687; *NLRB* v. *Weirton Steel Co.*, 135 F. (2d) 494, 495-496 (C. C. A. 3); *NLRB* v. *Tennessee Products Co.*, 134 F. (2d) 486 (C. C. A. 6); *NLRB* v. *New Era Die Co.*, 118 F. (2d) 500, 504 (C. C. A. 3); *Reliance Mfg. Co.* v. *NLRB*, 125 F. (2d) 311, 319 (C. C. A. 7). See generally VIOLATIONS OF FREE SPEECH AND RIGHTS OF LABOR, Reports of Senate Committee on Education and Labor pursuant to S. Res. 266 (74th Cong.) extended by S. Res. 98 (78th Cong.) (*e.g.* Report No. 46, 75th Cong. 2d Sess.; Report No. 6, 76th Cong. 1st Sess.; Report No. 1150, 77th Cong. 2d Sess.; Report No. 398, 78th Cong. 1st Sess.).

The Texas statute strikes at the heart of the exercise of the rights of self-organization because it offers anti-union

employers a ready target against which to instigate hostile pressures. Unions are threatened not when they have achieved growth and collective support but at the stage of solicitation, the "critical formative stage." *Kansas City Power & Light Co.* v. *NLRB*, 111 F. (2d) 340 (C. C. A. 8). Nor is the grave threat to collective activities implicit in the statute posited upon idle speculation. The statute is the work of a State where employers have been unusually aggressive in their attacks upon labor organizations. *Ford* case, supra; *American Smelting & Refining Co.* v. *NLRB*, 128 F. (2d) 345 (C. C. A. 5); *El Paso Electric Co.* v. *NLRB*, 119 F. (2d) 581 (C. C. A. 5); *NLRB* v. *Ed. Friedrich, Inc.*, 116 F. (2d) 888 (C. C. A. 5); *NLRB* v. *Hawk & Buck Co.*, 120 F. (2d) 903 (C. C. A. 5); *Mexia Textile Mills* v. *NLRB*, 110 F. (2d) 565 (C. C. A. 5), enforcing 11 NLRB 1167; *NLRB* v. *Texas Mining & Smelting Co.*, 117 F. (2d) 86 (C. C. A. 5); *NLRB* v. *West Texas Utilities*, 119 F. (2d) 683 (C. C. A. 5); *Texas Co.* v. *NLRB* 112 F. (2d) 744 (C. C. A. 5); *NLRB* v. *Tex-O-Kan Flour Mills*, 122 F. (2d) 433 (C. C. A. 5); *NLRB* v. *Bowen Motor Coaches*, 124 F. (2d) 151 (C. C. A. 5); *NLRB* v. *Dixie Motor Coach Co.*, 128 F. (2d) 201 (C. C. A. 5); *Southport Petroleum Co.* v. *NLRB* 315 U. S. 100, affirming 117 F. (2d) 90 (C.C.A. 5); *NLRB* v. *East Texas Motor Freight Lines*, decided February 3, 1944 (C. C. A. 5).

The statute by requiring this disclosure forces the constitutional right of soliciting membership in a labor organization into a forum fatal to its effective exercise and equally fatal therefore to the effective exercise of the right of free speech which workers seek to exercise through their organization. There is, however, still another aspect of the process of organization and the operation of employe organizations in the context of which this statute operates as a very serious and damaging restraint on civil rights.

(ii) The Texas Statute Destroys Organizational Rights by Imposing Unreasonable Delays.

The process by which employes formulate their views and channelize them into the organized form which alone can make those views heard is necessarily dynamic. It is subject to the stresses and impulses and developments among large groups of people who are almost constantly in daily and hourly contact with each other in their employment and in their residence. A worker seeking the membership of a fellow employe in his organization does not normally arrange an advance appointment to meet for discussion in either of their respective "offices." The solicitation occurs in lunch time gatherings, in chance contacts on the streets or in the public conveyances or on visits to homes. As in any dynamic process, speed and strategic timing in an appeal are frequently of the essence. The organizational impulse quickens and fades in a plant in response to a host of variables in the employment situation. Unless a leader in the thought of the workers is available to register and channelize their choice and direction of thought at a strategic moment when the ideas of a substantial number are tending to crystallize, the right to solicit and the right to join labor organizations may become mere abstractions. (*Cf. Medo Photo Supply Co.* v. *NLRB*, decided by this Court April 10, 1944).

It is for this reason that it is normal practice in the annals of labor organization for a struggling group of employes in one establishment to call upon fellow union members in a neighboring plant to render aid, on a particular day, in the distribution of leaflets at the relatively unorganized plant, urging and soliciting membership in the union, or in visits to and discussions with the workers in the unorganized establishment. Workers undertaking this task of fraternal assistance may be and frequently are compensated out of union funds for their assistance. As

members of the union they have at all times engaged in solicitation of new members and in the expounding of the union's program and viewpoint. Overnight they are converted for a single day into paid union organizers within the mechanical concept of the Texas statute. Under the terms of the statute, however, they are denied the power to exercise their right of solicitation at the very moment when that right can be most effectively exercised. Under the terms of the statute they are required either to travel the distance to Austin to seek their license from the Secretary of State and to subject their "credentials" to his examination, or in the alternative they are required to engage in days of correspondence before they may proceed to their neighboring establishment to request the workers in that establishment to join a union.

Thus even apart from all other considerations the injection of the element of delay into the right to induce workers to join an organization means the injection of an element which can be fatal to the meaningful and effective exercise of that right.

In the *Cox* case, supra, this Court declared that even where so clear a State interest as regulation of the use of streets for parades and processions is involved "the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought." (312 U. S. at 574.) In the dictum from the *Cantwell* case, *supra*, so frequently referred to by the State of Texas in the lower courts in this proceeding, this Court declared that even for the protection of so clear a public interest as is involved in the public solicitation of funds it is important to ascertain that the regulation "does not unreasonably obstruct or delay the collection of funds." 310 U. S. at 305.)

It is perfectly clear that these cases can give no comfort to the State of Texas. The statute in the present case unwarrantedly abridges the civil right and the opportunity for the exercise of the civil right in a manner which amounts in many instances to virtual denial. The statute unreasonably obstructs and delays the exercise of the right. It changes the forum of discussion of union organization in a manner calculated to make consideration of the appeal for union membership less free. It imposes restrictive delays upon the free discussion of ideas in a realm in which timing in the crystallization of the thoughts of large numbers of individuals is of the essence of the right to discussion among those individuals.

(b) ***Separate and apart from the prohibitive effects of the Texas statute on the exercise of civil rights, it cannot be supported because on the other side of the balance there is not merely no "clear and present danger" to any interest which the State might legitimately seek to protect, but there is literally no reasonable relationship between this statute and any conceivable evil which the State of Texas might seek to eliminate.***

We turn now to the other side of the balance involved in the test described by this Court in the *Schneider* case, *supra*. It will be recalled that this Court there said that where legislative abridgement of fundamental principles of personal rights embodied in the First Amendment is involved "the Court should be astute to examine the effect of the challenged legislation." (308 U. S. at 161.) An astute examination of the *effect* of this legislation is what we have urged in the foregoing pages. With respect to the other side of the balance, this Court continued in the *Schneider* case to point out that

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify

such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." (308 U. S. at 161.)

As elaborated further in *West Virginia* v. *Barnette*:

"* * * Freedoms of speech and of press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect." (319 U. S. at 639.)

And in further elaboration of the scope and meaning of the "clear and present danger" doctrine, this Court has explained (*Bridges* v. *California*, 314 U. S. 252, 262, 263):

"* * * the 'clear and present danger' language of the Schenck case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, Schenck v. United States, *supra*; Abrams v. United States, 250 U. S. 616; under a criminal syndicalism act, Whitney v. California, *supra*; under an anti-insurrection act, Herndon v. Lowry, *supra*; and for breach of the peace at common law, Cantwell v. Connecticut, *supra*. And very recently we have also suggested that 'clear and present danger' is an appropriate guide in determining the constitutionality of restrictions upon expression where the substantive evil sought to be prevented by the restriction is 'destruction of life or property, or invasion of the right of privacy.' Thornhill v. Alabama, 310 U. S. 88, 105.

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial' * * * it must be 'serious.' And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into 'substantive evils of sufficient weight to

warrant the curtailment of liberty of expression. Schneider v. State, 308 U. S. 147, 161."

What then is the legitimate interest of the State purportedly served by this Texas abridgement of free speech? What is the "grave and immediate danger" which the State of Texas can purport to face in order to come within the doctrine of *West Virginia* v. *Barnette*? Indeed it might be asked, "Even if this Court in the *Schneider* case had not announced the far broader scope of protection to which Appellant is entitled, is there even a 'public inconvenience or annoyance' to which this legislation is addressed?"

The Supreme Court of the State of Texas found in this connection only a possible protection against "fraud." The court below suggested that

> "It is important to the laborer that he be able to know that the representations of the purported organizer who approaches him with a request that he join the union *and pay his dues* in order to be able to work on a particular job are the representations of an accredited agent of the union.* * *" (R. 323.) (Emphasis supplied.)

The Texas court further suggested the importance

> "that the purported representative be identified in order that pretenders under the guise of authority from the union may not misrepresent the organization nor *collect or squander funds* intended for its use." (R. 323.) (Emphasis supplied.)

In both these quotations the Court refers to the payment of dues and the collection of funds. In so doing the simple fact is that the Texas Supreme Court was discussing a purely hypothetical statute in no way related to the statute involved in the present case.

The Texas statute has nothing to do with the payment of dues or the collection of funds.

A license is required solely for the solicitation of members. Appellant or anyone else may collect dues from old or new members without the necessity for a license.

Indeed, the Texas Secretary of State was somewhat concerned with the situation presented where the solicitation of membership constitutes only a part of the duties or activities of an individual. The conclusion, embodied in the official regulations issued by the Secretary, is that a " 'business agent,' secretary or other employe of a union" may conduct any activity whatsoever on behalf of a union, without a license, so long as he "wholly abstains from the solicitation of memberships." (Def. Exh. 1, Secs. 9, 10, R. 74, 12–13).

It is precisely and solely the act of expounding the union's desirability and seeking support for its program through appeals for membership that is subjected to the licensing requirement. It is not at all the collection of funds that is subjected to any licensing requirement. Indeed, the whole purpose and end of the solicitation of membership has no necessary or immediate relationship to the collection of dues. In seeking the support of their fellow workers for their organization, the members of a labor organization merely seek the formation of a collective bargaining entity authorized to express the voice of the worker in the industrial forum. It is fairly common practice during the period of organization for the members of a union to attach no dues obligation to membership until a collective bargaining relationship has been established. And, of course, the right of a labor organization to represent its members depends solely on authorization and not on dues payments. *NLRB v. Bradford Dyeing Association*, 310 U. S. 318, 338-9; *NLRB* v. *National Motor Bearing Co.*, 105 F (2d) 652 (C.C.A. 9); *NLRB* v. *Chicago Apparatus Co.*, 116 F (2d) 753, 756 (C.C.A. 7); *NLRB* v. *Somerset Shoe Co.*, 111 F (2d) 681, 687 (C.C.A.

1); *Lebanon Steel Foundry* v. *NLRB*, 130 F (2d) 404 (App. D. C.) *certiorari* denied 317 U. S. 659.

Certainly there can be no serious suggestion that the "fraud" which is feared lies in the possibility of an appeal for membership in a union made by a person who actually does not speak on behalf of the union. Appeals in favor of union membership are regularly made by persons who do not speak on behalf of any union, just as appeals against union membership are made by persons who do not speak directly on behalf of any employer. From all the 55 volumes of decisions of the National Labor Relations Board, from its inception to the present date, despite the astuteness displayed by thousands of employers in discovering reasons why membership of employes in certain organizations should be discounted as true indications of the representation desires of those employes, the State of Texas has not been able to indicate a single instance in which an employe's membership in or adherence to a union was challenged because the man who urged him to join was not a "duly accredited representative" of the organization which the worker joined.

It is difficult to conceive the "fraud" which could be feared in the act of urging the desirability of membership in a union. In a democratic society the determining factor in the employe's final choice should presumably be the persuasiveness of the arguments advanced, the merits of the organization, rather than the specific organizational affiliation or non-affiliation of the speaker.

Moreover, if there is fear that persons may purport to represent a union but actually not be its representatives, that danger would presumably stem precisely from those persons who are *not* paid by the union. It is not, we assume, suggested that the union would *pay* a man *not* to be its representative. But the statute requires a license pre-

cisely and solely from those who *are* paid by the union. Those who are not paid by the union or who have no relationship to it (and therefore presumably might commit the "fraud" of claiming such a relationship) are precisely the ones who are perfectly free to solicit membership for that union without a license at any time and at any place.

We can only assert in all seriousness that argument on the question of the public interest to which a statute of this type can claim to be addressed can involve counsel only in a hopeless search for a will-o'-the-wisp. The simple fact is that a license from the Secretary of State in Austin is required before the magic words: "Will you join my union?" may be uttered, if the person who dares to make the request happens to be compensated by his fellow union members for services performed on their behalf. No funds are involved. No public streets are involved. No parades are involved. No disturbances are involved. Nothing other than the expression of a forbidden idea.

"Freedoms of speech and of press, of assembly and of worship," this Court has said "may not be infringed on such slender grounds" as a mere "rational basis" for the infringement (*West Virginia* v. *Barnette*), nor on the basis of "mere legislative preferences or beliefs respecting matters of public convenience (*Schneider* v. *New Jersey*). In the present case it is difficult to discover even rational basis or public convenience. Indeed it is difficult to conceive in support of the present statute even the shadow of a possibility of a speculation.

C. *Conclusion as to Point I*

The Texas statute can be upheld only by analysis which fails to pierce superficial analogies and strike to fundamental concepts and principles.

There is an inveigling symmetry in the suggestion that since plumbers, brokers and sellers of insurance may be subjected to licensing requirements, so may employes' spokesmen who are compensated by their fellow union members for their services. But there is an equal symmetry in the contention that since taxes are imposed on distributors of commercial literature, so may taxes be imposed on the dissemination of ideas or on the distribution of religious literature. This Court has rejected that symmetry in the light of far more fundamental principles.

There is an inveigling but specious quality in the suggestion that since the use of the public streets for parades may be regulated and since public solicitors of funds may be asked to identify themselves, so may a person seeking to persuade others of the desirability of membership in a labor organization be required to secure a license to permit him to engage in that activity. But the Texas statute relates neither to the public streets nor to the solicitation of funds. It offers no suggestion as to why the dissemination of one carefully isolated idea, the idea of the desirability of union membership, should above all others be singled out as the one idea whose dissemination requires the prior identification and registration of the speaker. This same specious analogy further requires the astute examination which this Court has enjoined upon itself with respect to the realistic effect of challenged legislation in this all-important realm of free discussion of ideas. The facts within the judicial experience of this Court and within the confines of this record demonstrate that the practical impact of this statute is to impair and severely limit the effective exercise by workers of their civil rights through the organizations which they have built and are attempting to build as the only effective medium available to them for the presentation of their point of view in the form of public discussion.

The civil rights of the individual men and women who comprise this nation are not intended to be philosophic abstractions. They are intended to be practical realities. But they can be practical realities only to the extent that freedom is granted to make them so. They must not be rights limited in effective application to those individuals whose personal wealth or power makes possible the effective exercise of free speech. From the Minute Men organizations and Councils of our colonial forebears, on through our history, the concept of assembly and organization, as a means of putting meaning and effectiveness into the rights of men whose individual voices are not sufficiently powerful to be heard alone, has been a fundamental of our democratic structure. The very declaration in our First Amendment of the right of assembly is coupled with the right of joint action flowing out of that assembly in the form of petition to the government. In the present case Appellant made a speech in which he invited oil workers to join their fellow employes in an organization which could best speak for them all. May the State of Texas constitutionally require that he secure a license to be permitted to make that speech? In the present case Appellant was designated and requested, by those oil workers who had already joined in organization, to be their spokesman in requesting and persuading other oil workers to join in the group. May those oil workers, on whose behalf Appellant made the speech, be subjected to the requirement that any spokesman they select secure a license before he may make a speech calculated to strengthen and support their common views?

These are the questions posed by this proceeding. We respectfully submit that they require a declaration by this Court that the Texas statute is unconstitutional.

II.

The Statute Constitutes Class Legislation, Is Discri natory and Deprives Appellant of the Equal Prot tion of the Laws as Guaranteed by the 14th Ame ment of the Federal Constitution.

The licensing provisions of the statute embody an unc stitutional denial of equal protection of the laws. T denial consists of (1) the arbitrary and unreasonable crimination against labor organizations and (2) arbitr and unreasonable discrimination against non-citizens.

A. *The Statute Makes an Arbitrary and Unreasona Discrimination Against Labor Organizations.*

Under the statute only persons who solicit membersh for labor unions are required to obtain licenses.

We shall not burden the Court with citation or quotat of the general rules governing the degree of equal treatm required by the equal protection clause of the 14th Ame ment. There is, of course, no dispute concerning the po of the State to pass laws which make appropriate classif tions based on reasonable and relevant differences. Th is equally no doubt that in making such classifications imposing limitations and prohibitions upon one gr which are not imposed upon other groups the State m act on the basis of a reasonable relationship to the ob sought and not on the basis of any arbitrary and unreas able classifications. *Connolly* v. *Union Sewer Pipe* 184 U. S. 450; *Frost* v. *Corporation Commission*, 278 U 515; *Hartford Co.* v. *Harrison*, 301 U. S. 459; *Bethlei Motors Co.* v. *Flynt*, 256 U. S. 421.

The testimony discloses that no other Texas stat requires licenses for persons soliciting memberships organizations other than those engaged in business

commercial activities. Employer associations, fraternal organizations and churches may solicit members for their organizations through paid representatives without first obtaining licenses. Only labor unions are subject to the regulations and prohibitions of the Statute.

There is a striking parallel in this situation with the circumstances involved in the case of *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 450. The Illinois statute there involved outlawed certain types of trusts and combinations. The provisions of the act, however, were expressly stated not to be applicable to "agricultural products or livestock while in the hands of the producer or raiser."

After outlining the principles governing the equal protection clause, the Court declared (at 560):

> "These principles applied to the case before us condemn the statute of Illinois. We have seen that under the statute all except producers of agricultural commodities and raisers of livestock, who combine their capital, skill or acts for any of the purpposes named in the act, may be punished as criminals while agriculturists and livestock raisers in respect of their products or livestock in hand, are exempted from the operation of the statute and may combine and do that which, if done by others, would be a crime against the state. The statute so provides notwithstanding persons engaged in trade or in the sale of merchandise and commodities, within the limits of a state, and agriculturists and raisers of livestock, are all in the same general class, that is, they are all alike engaged in domestic trade, which is, of right, open to all, subject to such regulations, applicable alike to all in like conditions, as the state may legally prescribe."

After further analyzing the nature of the distinction and the justification advanced for the distinction, the Court concluded as follows:

> "We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic

> trade or commerce shall be criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to regard those regulations, but may combine their capital skill or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary."

It is not enough in the present case to point to the fact simply that one group involves employers while the other group involves employes. Any attempt to rely upon such difference would constitute a clear attempt to justify class legislation. As the Supreme Court, quoting long-established authority, said in *Frost* v. *Corporation Commission*, 278 U. S. 515, at 522-523:

> "* * * Mere difference is not enough: the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', *Gulf Colorado and Santa Fe Railway v. Ellis*, 165 U. S. 150, 155. *Louisville Gas Company v. Coleman.* * * *"

The Court in the *Frost* case had before it a statute which required that some applicants for a license to operate a cotton gin show public necessity for their grant of their application while others were relieved from the necessity of making such a showing. Although there were some differences advanced in support of this distinction, the Court after analysis of the facts, concluded:

> "Stripped of immaterial distinctions and reduced to its ultimate effect the proviso as here construed and applied baldly creates one rule for a natural person and a different and contrary rule for an artificial person, notwithstanding the fact that both are doing the same business with the

> general public, and to the same end, namely that of reaping profits, that is to say it produces a classification which subjects one to the burden of showing a public necessity for his business from which it relieves the other, and is essentially arbitrary, because based upon no real or substantial differences having reasonable relation to the subject dealt with by the legislation. *Power Company v. Saunders*, 274 U. S. 490, 493; *Louisville Gas Company v. Coleman, supra*, p. 39; *Quaker City Cab Company v. Pennsylvania, supra*, p. 402."

In determining the validity of statutes restricting civil rights this Court has emphasized that such statute must be "general" in their application. In *Cantwell* v. *Connecticut*, supra, the Court stated that a "*general* regulation in the public interest, of solicitation . . . is not open to any constitutional objection." (310 U. S. at 305.)

The basis for requiring that a law which abridges civil rights be "general" in its application is readily apparent. The courts will not lightly permit restriction of civil rights (*Thornhill* v. *Alabama, supra*). A statute which abridges such rights will not be sustained by any presumption of validity (*Prince* v. *Commonwealth, supra*). To permit freedom of speech to be abridged by a law directed specifically at the exercise of such freedom by one group would open the door to oppression.

If labor unions can properly be singled out for regulation by restricting the speech of their members, then similar restrictions can be placed upon other groups and sections of the community by the current majority. We doubt whether this Court would have upheld the validity of the statute in the case of *Cox* v. *New Hampshire, supra*, if it had provided a licensing requirement only for religious groups, or the statute in *Prince* v. *Commonwealth, supra*, if it had prohibited children from selling only religious literature on the streets.

B. *The Statute Makes an Arbitrary and Unreasonable Discrimination Against Non-Citizens.*

We have already pointed out that the licensing provision of the statute constitutes a curtailment of the right of free speech of labor representatives. We have pointed out that the State is without power to condition the right of Americans to solicit a worker to join a union.

With respect to non-citizens, however, the statute goes even further. With respect to non-citizens there is a complete prohibition since the license may be issued only to persons who are citizens of the United States.

As to non-citizens, therefore, the denial of constitutional rights is even clearer. It is clearer as a matter of due process because the question is not merely whether the State may attempt to license these activities but whether the State may attempt an outright prohibition.

The denial of the constitutional rights of non-citizens is, however, clear on another foundation, namely, the guarantee under the 14th Amendment of equal protection of the laws. No justification has been advanced, no justification can be advanced in the legislative history or otherwise, for the discrimination against non-citizens reflected in this provision.

Although Appellant is an American citizen and, if he had complied with the statutory prerequisites, could have obtained the license provided by the statute, he may nevertheless in this proceeding challenge the constitutionality of the law on the ground that it denies equal protection of the laws to non-citizens.

> "One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it." *Thornhill v. Alabama, supra* (310 U. S. at 97).

If that portion of the statute which denies equal protection of law to non-citizens is unconstitutional, then the entire licensing provision must fall. Otherwise the Court would have to rewrite the law for the legislature by including non-citizens in the licensing provision where the legislature has seen fit to exclude them.

It is a matter of clear and accepted law that distinctions between aliens and citizens based on no reasonable foundation fall precisely under the heading of discriminations forbidden by the equal protection clause of the 14th Amendment.

In Cooley on Constitutional Limitations, 8th Ed., the law on this issue is summarized as follows:

> "But a denial of a license to aliens to engage in a lawful occupation is a denial of the equal protection of the law in violation of the Federal Constitution." (at p. 1335).
>
> "It is not competent therefore to forbid any person or class of persons whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them" (at p. 1341).

The case of *Truax* v. *Raich*, 239 U. S. 33, is the leading and famous case on this subject and is completely decisive of the point involved here. We respectfully submit that this aspect alone of the licensing requirement is sufficient to render it invalid.

CONCLUSION

The Texas statute imposes an unwarranted and unreasonable restraint amounting to an unconstitutional previous general restraint upon the exercise of civil rights guaranteed by the First and Fourteenth Amendments of the United States Constitution. It is particularly important in the present period in national and world history

that the exercise of those rights be jealously safeguarded and that interference with those rights be denounced. We respectfully submit that the Texas statute on its face and as applied to the Appellant is unconstitutional.

Respectfully submitted,

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